Support and Property Rights of the Putative Spouse

Florence J. Luther
Charles W. Luther

Follow this and additional works at: https://repository.uchastings.edu/hastings_law_journal

Part of the Law Commons

Recommended Citation
Available at: https://repository.uchastings.edu/hastings_law_journal/vol24/iss2/6

This Article is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Law Journal by an authorized editor of UC Hastings Scholarship Repository.
Support And Property Rights Of
The Putative Spouse

By Florence J. Luther* and
Charles W. Luther**

To require a "non-husband" to divide his assets with and to pay
support to a "non-wife" may, at first glance, appear doctrinaire. How-
ever, to those familiar with the putative spouse doctrine as it had de-
developed in California the concept should not be too disquieting. In
1969 the California legislature enacted Civil Code sections 4452 and
4455 which respectively authorize a division of property1 and perma-
nent support2 to be paid to a putative spouse upon a judgment of an-
ulment.3 Prior to the enactment of these sections, a putative spouse
in California was given an equitable right to a division of jointly ac-
quired property,4 but could not recover permanent support upon the
termination of the putative relationship.5 This article considers the ef-
effect of these newly enacted sections on the traditional rights of a puta-
tive spouse to share in a division of property and to recover in quasi-
contract for the reasonable value of services rendered during the puta-

---

* Professor of Law, University of the Pacific, McGeorge School of Law.
** Professor of Law, University of the Pacific, McGeorge School of Law.
3. California Civil Code section 4455 (West Supp. 1972) additionally provides
that the court may "during the pendency of a proceeding to have a marriage adjudged
a nullity" order a party to pay for the support of a putative spouse. Prior case law
recognized the right to temporary support in the case of a voidable marriage. See Mid-
dlecoff v. Middlecoff, 171 Cal. App. 2d 286, 340 P.2d 331 (1959). However, where a
void marriage was involved, the cases expressly denied temporary support. In re Cook,
tive relationship. Also considered are the effects of Civil Code section 5118 on the legal spouse’s rights as opposed to those of a putative spouse.

The Putative Spouse Doctrine

A putative marriage is commonly defined as a solemnized marriage in which one or both parties are unaware of an impediment that causes the marriage to be void or voidable. To protect the innocent spouse—the one acting in good faith—California has long recognized such a relationship as being quasi-marital and has allowed such a party certain rights which would accrue in a lawful marriage. This is to be distinguished from the situation where the relationship is deemed to be meretricious, that is, one in which both parties are aware that the relationship is illicit. In that case neither can be classified as a putative spouse. A typical consequence of such a meretricious relationship is that there can be neither division of property accumulated by either party nor quasi-contractual recovery.

Impact of Section 4452 upon the Division of Quasi-Marital Property

Section 4452 of the Civil Code provides in part:

Whenever a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall declare such party or parties to have the status of a putative spouse . . . .

Many states have not adopted the concept of a putative marriage. H. CLARK, LAW OF DOMESTIC RELATIONS 52-53 (1968); 20 WASH. & LEE L. REV. 91, 92 (1963); 2 WILLAMETTE L.J. 207 (1962).

6. Estate of Foy, 109 Cal. App. 2d 329, 240 P.2d 685 (1952); W. DE FUNIAK & M. VAUGHN, PRINCIPLES OF COMMUNITY PROPERTY 96 (2d ed. 1971). While most states require a ceremony before there can be a putative marriage, a few decisions have held it is not necessary. Succession of Marinoni, 183 La. 776, 164 So. 797 (1935), noted in 10 TUL. L. REV. 435 (1936). California Civil Code section 4206 (West 1970) provides: “No particular form for the ceremony of marriage is required, but the parties must declare, in the presence of the person solemnizing the marriage, that they take each other as husband and wife.” California Civil Code section 4452 (West Supp. 1972) provides in part: “Whenever a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall declare such party or parties to have the status of a putative spouse . . . .”

7. See Schneider v. Schneider, 183 Cal. 335, 191 P. 533 (1920); Turknette v. Turknette, 100 Cal. App. 2d 271, 223 P.2d 495 (1950); H. CLARK, LAW OF DOMESTIC RELATIONS 54 (1968); Evans, Property Interests Arising from Quasi-Marital Relations, 9 CORNELL L. REV. 246 (1924).

8. Vallera v. Vallera, 21 Cal. 2d 681, 134 P.2d 761 (1943). However, as Vallera points out, each spouse is entitled to share in property jointly accumulated in proportion to the spouse’s contribution. No express agreement between the parties to divide the property need exist.
good faith that the marriage was valid, the court shall declare such
party or parties to have the status of a putative spouse, and, if the
division of property is in issue, shall divide, in accordance with Sec-
tion 4800, that property acquired during the union which would
have been community property or quasi-community property if the
union had not been void or voidable.9

Section 4800 requires, with limited exceptions, that where there is a
valid marriage, the court must make an equal division of all the com-
munity and quasi-community property.10 In the case of a putative mar-
riage, such property is now described as “quasi-marital property.”11
To determine the impact of section 4452, some background on the de-
velopment of the putative spouse doctrine is helpful.

Pre-Section 4452 Remedies for the Putative Spouse

Traditionally, California cases based the putative spouse’s right to
share in jointly accumulated property on one or both of the following
theories:12 the quasi-community property doctrine13 and general equita-

10. The exceptions to the requirement of equal division of community and quasi-
community property are: (1) where, pursuant to California Civil Code section 4800(a)
(West Supp. 1972), the parties agree in writing, or on oral stipulation of the parties
in open court, to an unequal division; (2) where, pursuant to section 4800(b)(2), the
court exercises its power to make awards to offset amounts “deliberately misappropri-
ated” by one party “to the exclusion of the community property or quasi-community
property interest of the other party”; (3) where, pursuant to section 4800(b)(3), “the
net value of the community property and the quasi-community property is less than
. . . $5,000 and one party cannot be located through the exercise of reasonable dili-
gence”; and (4) where, pursuant to section 4800(c), the court has discretion to award
half of “community property personal injury damages” to the parties “as the court de-
termines to be just.” Presumably all these exceptions apply in proceedings involving a
putative marriage since California Civil Code section 4452 (West Supp. 1972) specifi-
cally provides that the division of quasi-marital property “shall” be divided in ac-
cordance with section 4800. Query, however, whether a court would allow an unequal di-
vision of property pursuant to California Civil Code section 4800(a) to be agreed upon
to the exclusion of a lawful spouse.
11. CAL. CIV. CODE § 4452 (West Supp. 1972). This section provides that “prop-
erty acquired during the union which would have been community property or quasi-
community property if the union had not been void or voidable . . . shall be termed
‘quasi-marital property.’”
12. The listing herein of several theories is not meant to be all inclusive.
See other bases for recovery in community property states referred to in W. de Funiak & M. Vaughn, Principles of Community Property 97 (2d ed. 1971). Some non-
California cases have held that the usual civil effects of a valid marriage accrue to a
lawful spouse. See Patton v. Philadelphia and New Orleans, 1 La. Ann. 98 (1946); Lee v. Smith, 18 Tex. 141 (1856). For an analysis of Louisiana cases dealing with pu-
tative marriage, see Comment, The Putative Marriage Doctrine in Louisiana, 12 Loy-
ble principles. Under the first of these theories, relief was afforded to the putative spouse by analogy to the laws of community property. Thus, property which would have been community property had the marriage been valid was treated as community property and divided pursuant to the principles governing community property.  

Despite the availability of this doctrine, some courts used their inherent equitable powers to grant relief and protect the rights of an innocent party in property acquired by virtue of the joint efforts of such innocent party and his or her supposed spouse. One method utilized by the courts in granting such equitable relief was to treat a putative spouse relationship as a partnership or quasi-partnership. The result in these cases was apparently similar to the decisions following the quasi-community property theory.

The cases apply one or both of the above bases to allow a putative spouse to recover a share of the property jointly acquired during the putative marriage. These cases can be conveniently divided into

---


3. Schneider v. Schneider, 183 Cal. 335, 191 P. 533 (1920); Jackson v. Jackson, 94 Cal. 446, 463-64, 29 P. 957, 960 (1892) (Harrison, J., concurring).


6. See cases cited note 14 supra.

7. Perhaps the most apt description of the California method of protecting the putative spouse prior to the enactment of California Civil Code section 4452 (West Supp. 1972) is "a judicially created equitable community property system analogous to the legal system." H. Verrall & A. Sammis, California Community Property 63-7 (2d ed. 1971) [hereinafter cited Verrall].
two categories: (1) where the putative relationship terminates while both supposed spouses are living and (2) where the putative relationship terminates by death of one of the supposed spouses.

In 1911 the court considered *Coats v. Coats*, a case which fell into the first category. The marriage was voidable by reason of the putative spouse's physical incapacity. After the husband had obtained a judgment annulling the marriage, the putative wife sued the supposed husband to obtain a division of the property accumulated during their relationship. The court held that she was entitled to an equitable apportionment of the property, treating it as if it were the community property of a valid marriage. In another case, where the marriage was void as bigamous, it was further held that a putative spouse was entitled to distribution of the "marital" property as if it were community property. Where both parties innocently entered into an incestuous relationship, the marriage thus being void, both were held to be putative, and the property acquired with the supposed husband's earnings was divided as if it were community property of a valid marriage. The results in these cases seem fair enough and, as will be noted hereafter, are likely to be followed in cases interpreting Civil Code section 4452.

19. While a more sophisticated classification of cases may be possible, the present two categories are satisfactory for purposes of analyzing California Civil Code section 4452.

20. 160 Cal. 671, 118 P. 441 (1911). In *Coats* the putative spouse brought an action after the supposed husband had obtained a judgment annulling the marriage. California Civil Code section 4452 purports to apply only in proceedings to declare a marriage void or voidable. It is submitted the legislative intent of section 4452 is best served if the provisions of that section are applied in proceedings between the putative spouse and the supposed spouse even if those proceedings are brought after a judgment of nullity. Presumably, such later proceedings would normally only be instigated in cases where the parties did not put the property at issue in the action to obtain a judgment of nullity.

21. The court's reasoning is as follows: "If both have contributed to such acquisitions, each has an interest which did not exist at the time of the marriage. . . . In the absence of fraud or other ground affecting the right to claim relief, there can be no good reason for saying that either party should, by reason of the annulment, be vested with title to all of the property acquired during the existence of the supposed marriage. . . . "The apportionment of such property between the parties is not provided by any statute. It must, therefore, be made on equitable principles. In the absence of special circumstances, such as might arise through intervening claims of third persons, we can conceive of no more equitable basis of apportionment than an equal division." 160 Cal. at 676, 678, 118 P. at 443, 444.

24. See M. Freeman, W. Hogboon, W. McFadden & L. Olson, Attorney's
All these cases were decided when no prior legal marriage had existed. However, the courts also protected the putative spouse when the legal wife claimed an interest in property acquired by the joint efforts of the husband and a putative wife during a subsequent putative marriage. Twenty-three years after her husband had abandoned her, the legal wife in Blache v. Blache brought a separate maintenance action seeking a share of the property which had been accumulated by her husband and his putative spouse. The court held that the legal wife may share only in the husband’s half of the “quasi-marital” property accumulated during the putative marriage.

Thus, the putative wife was entitled to one half of the quasi-marital property free of any claims by the legal wife. However, in Brown v. Brown, the court held that the legal wife may be estopped to claim a share of the assets accumulated by the legal husband and his putative wife. The court reasoned that the legal wife’s acquiescence and silence during the twenty-eight year putative marriage permitted the rights of the putative wife to intervene to the total exclusion of the legal wife, except as to support.

In cases where death terminates the putative relationship and where no legal spouse is involved, the putative spouse has been given the entire quasi-marital estate upon the intestacy of the supposed husband. Yet, where the supposed spouse dies intestate, leaving both a legal spouse and a putative spouse surviving, the legal spouse receives one-half of the quasi-marital property and the putative spouse receives the


26. The court did not use the term “quasi-marital”; it is used herein at times for convenience only to describe the nature of the assets as they would now be classified. The opinion also indicated that the legal wife might, under proper circumstances, be barred by estoppel, waiver or abandonment from recovering at all. Id. at 624, 160 P.2d at 140-41. Accord, Brown v. Brown, 274 Cal. App. 2d 178, 79 Cal. Rptr. 257 (1969).
28. Id. at 192, 79 Cal. Rptr. at 266. The court stated that although the legal wife was estopped from claiming a community property interest in the property acquired by her husband and his putative spouse, she was not estopped from seeking reasonable alimony from her husband. The case was reversed to determine the alimony issue in accordance with the husband’s financial position and his legal wife’s needs.
29. Estate of Krone, 83 Cal. App. 2d 766, 769-70, 189 P.2d 741, 743 (1948). The court stated: “[I]f according to statute the survivor of a valid, ceremonial marriage shall be entitled to take all of the community estate upon its dissolution, then by parity of reasoning why should not the wife inherit the entire estate of a putative union upon the death of her husband intestate? Clearly she does inherit all.”
remaining one-half. However, if the supposed spouse by will purports to leave his entire estate to the putative spouse, *Sousa v. Freitas* holds that the putative spouse is "entitled to one-half of her own right; plus the half of the community property decedent was entitled to devise, or another one-quarter of the whole" leaving the legal wife with but one-quarter of the entire estate.

### The Effect of Section 4452 on Prior Remedies

The new section 4452 by itself would not necessarily require a different result in any of the previously discussed decisions. It merely makes statutory the previously recognized property rights of a putative spouse when there is a void or voidable marriage. The section also settles the issue as to the status of quasi-community property by specifically including such property in the description of "quasi-marital" property. It further prescribes the manner in which quasi-marital property shall be divided, whereas prior to the enactment of section 4452 the division was left to the discretion of the court in the exercise of its equitable powers.

32. *Id.* at 666, 89 Cal. Rptr. at 489.
33. *Id.* The "equitable" nature of the division of property was referred to by the court in *Sousa* when it stated: "We do not undertake to state that this analysis would be equitable in all cases, but we are satisfied that it is under the facts here." 10 Cal. App. 3d at 666, 89 Cal. Rptr. at 489. The court in *Sousa* referred to Civil Code section 4452 (West Supp. 1972), but stated that the provision did not resolve the conflicting claims of the lawful and the putative spouse. *Id.* at 666 n.4, 89 Cal. Rptr. at 489 n.4.
34. *Attorney’s Guide,* supra note 24, at 272. The authors state: "[Civil Code] 4452 does more than simply codify prior law. Before the Family Law Act, there was no statutory authority for awarding a putative spouse any share of the property accumulated during the supposed marriage. . . ." *Id.*
35. The lack of direct decisional authority on the point indicates the issue of the status of property analogous to "quasi-community property" has not often arisen in putative marriage actions. Civil Code section 4803 (West Supp. 1972) defines "quasi-community property" as used in the Family Law Act.
36. "[If] the division of property is in issue [the court] shall divide, in accordance with Section 4800, that property . . . ." *Cal. Civ. Code* § 4452 (West Supp. 1972). One can infer from this that if the parties did not place the property in issue in a proceeding to obtain a judgment of nullity of marriage, they can later litigate the property issue. The section also provides that "[I]f the court expressly reserves jurisdiction, it may make the property division at a time subsequent to the judgment." *Id.* Apparently, this was included to conform to Civil Code section 4800(a) (West Supp. 1972) which allows the court, in dissolution proceedings, to dispose of the property "at a later time" if it expressly reserves jurisdiction to do so. Even if a court decided section 4452 did not apply to litigation other than proceedings to obtain a judgment of nullity of marriage, it would seem logical that it would follow the essence of Civil Code section 4800 and divide the property equally.
37. *See* cases cited notes 25, 27, 29-31 *supra.*
One change from prior case law may be anticipated by viewing two new statutes together. Section 4452 does not purport to provide for the situation where the legal wife claims an interest in quasi-marital property. By providing the putative spouse with a statutory right to one-half of the quasi-marital property, by inference section 4452 leaves the remaining one-half to be divided between the husband and his legal spouse. This latter one-half may be dramatically affected by Civil Code section 5118. That statute, as amended in 1971, provides:

The earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse, are the separate property of the spouse.

The significance of this section in the context of section 4452 can best be appreciated if it is recognized that in most, if not all, of the reported decisions involving a putative spouse, the supposed husband did in fact separate from his lawful wife. Section 5118 requires that earnings and accumulations acquired after separation be classified as the separate property of the acquiring spouse. Thus, in the typical case, a legal wife will have no claim to assets acquired by a husband while he is living with a putative spouse. Of course, community property assets taken from the legal community do not lose their community character by virtue of the fact that a married spouse enters into a subsequent putative relationship. To the extent that a court is influenced

38. See note 33 & accompanying text, supra.
39. Cal. Civ. Code § 5118 (West Supp. 1972). Prior to the 1971 amendment, only the wife's earnings after separation were separate property. The husband's earnings and accumulations continued to be community property until the rendition of an interlocutory judgment of dissolution. Civil Code section 5119 (West Supp. 1972), as amended in 1971, also provides: "After the rendition of a judgment decreeing legal separation of the parties, the earnings or accumulations of each party are the separate property of the party acquiring such earnings or accumulations." Thus "the earnings and accumulations of either spouse received after actual separation . . . at a judgment of legal separation . . . are that spouse's separate property." Attorney's Guide, supra note 24, at 247.
40. E.g., Sousa v. Freitas, 10 Cal. App. 3d 660, 89 Cal. Rptr. 485 (1970) (fifty years from time of separation to claim by wife in decedent's estate); Brown v. Brown, 274 Cal. App. 2d 178, 79 Cal. Rptr. 257 (1969) (wife brought action thirty-five years after separation); Estate of Ricci, 201 Cal. App. 2d 146, 19 Cal. Rptr. 739 (1962) (thirty-seven years from time of separation to claim by wife in decedent's estate); Blache v. Blache, 69 Cal. App. 2d 616, 160 P.2d 136 (1945) (wife brought action twenty-four years after separation). Typically the assets in all the above cases were those acquired with earnings of the husbands after separation from his lawful spouse.

Presumably, Civil Code section 5118 does not apply retroactively. Cf. Addison v. Addison, 62 Cal. 2d 558, 43 Cal. Rptr. 97, 399 P.2d 897 (1965). Thus the full impact of the section may not be felt for some time.
41. Problems of apportionment may well arise. E.g., Modern Woodmen of Amer...
by some hardship suffered by the legal wife if she is denied a share of the post-separation earnings and accumulations of her husband, a court may very well decide, in its discretion, to award support to the legal spouse to assist her in the event of financial need.\(^4\)

What effect, if any, will section 4452 have on the conflicting claims between the legal wife and the putative wife when the "husband" dies? Seemingly the section changes nothing. As stated by Professors Verrall and Sammis:

> As the 1969 legislation was directed to marriage and divorce problems . . . the partial statutory recognition of the equitable community property system would seem to leave the rest of that system intact. On the ending of a putative relationship by death the equitable division of the property probably would continue.\(^4\)

However, the impact of Civil Code section 5118\(^4\) may well be felt in such cases. Most of the cases in the past involved post-separation assets accumulated by the decedent after he separated from his legal wife,\(^4\) and future cases probably will involve contests over the division of such accumulations.

**Impact of Section 4455\(^4\) Upon Support Rights of a Putative Spouse**

In the past, California courts held that a putative wife may recover from her supposed husband the reasonable value of her services rendered to him during the putative relationship.\(^4\) The supposed husband ordinarily was given an offset for support and maintenance furnished to the putative wife during the relationship.\(^4\) This judicially created right of a putative spouse was necessitated by the general rule that prohibited awarding permanent alimony or spousal support to a party of an invalid marriage.\(^4\)

\(^{42}\) E.g., Brown v. Brown, 274 Cal. App. 2d 178, 79 Cal. Rptr. 257 (1969). Such relief would also appear to be called for by Civil Code section 4801 (West Supp. 1972) which bases a legal spouse's right to support on the supported spouse's need and the supporting spouse's ability to pay.

\(^{43}\) VERRALL, supra note 18, 64.

\(^{44}\) See text at note 39 supra.

\(^{45}\) See cases cited note 40 supra.

\(^{46}\) CAL. CIVIL CODE § 4455 (West Supp. 1972); see text accompanying note 66 infra.


\(^{49}\) Id. Some early non-California cases held that the putative wife had no basis
Pre-Section 4455 Recoveries in Quantum Meruit

In at least three situations a putative spouse historically has been held to quantum meruit recovery in California. The first is where relief is granted to the putative wife who was fraudulently induced to believe she was married and where there is no jointly acquired property to divide upon termination of the relationship. In Mixer v. Mixer, an early California case, a putative spouse was led to believe that she had been married to her supposed husband while under the influence of drugs he had administered to her. Upon termination of the relationship, she sought fifty dollars per month as the reasonable value of her services during the putative relationship. The supposed husband claimed that since the services were of an immoral nature, any contract between them was illegal and unenforceable. The court held that the husband could not avail himself of his own fraud to escape liability, and awarded the putative wife a money judgment.

The second situation occurs when relief is granted the putative wife upon dissolution of the relationship because of the husband's misconduct not amounting to fraud and there is no jointly owned property. In the leading case of Sanguinetti v. Sanguinetti, the ostensible husband was granted an annulment on the basis that wife's first marriage had not been terminated. The California Supreme Court held that the putative wife was entitled to be paid "in so far as her services exceeded in value the support provided by her supposed husband" where the "de facto husband committed acts of cruelty which if the marriage had been valid would constitute cause for divorce." The court distinguished this case from those where the putative spouse was fraudulently induced by the nonputative spouse to enter into the relationship.

for recovery where she performed domestic services on behalf of her supposed husband. E.g., Cooper v. Cooper, 147 Mass. 370, 17 N.E. 892 (1888). For a review of cases in California through 1948, see 37 CALIF. L. REV. 671 (1949).


52. For similar holdings in non-California cases, see Higgins v. Breen, 9 Mo. 497 (1845); Estate of Fox, 178 Wis. 369, 371-72, 190 N.W. 90, 91 (1922).

53. 9 Cal. 2d 95, 69 P.2d 845 (1937).

54. Id. at 101, 69 P.2d at 848.

55. Cases cited notes 47 & 52 supra. In a dictum the opinion stated that the basis of relief in cases where the invalid marriage was procured by fraud was quasi-contractual. An award was made to prevent unjust enrichment of the fraudulent spouse. The opinion indicated that the meretricious husband was unjustly enriched by the amount which the reasonable value of the services rendered to him by his putative
The third circumstance arises where the putative spouse recovers for her services and there is no jointly acquired property except that which is held in joint tenancy. Even though the husband was not guilty of fraud or marital misconduct, such an award was held proper in Lazzarevich v. Lazzarevich. In that case, husband and wife lived together after the entry of a final decree of divorce, both believing they were still validly married. Upon termination of this putative relationship, the wife was awarded a sum equal to her services and contributions less the value of maintenance and support supplied her by the supposed husband. While the court cited Sanguinetti, it also relied on the Restatement of Restitution. Thus neither fault nor fraud was deemed necessary for recovery. Despite rather strenuous objections to awarding a putative spouse relief in the absence of fraud or marital misconduct, the court's approach in Lazzarevich was an enlightened one. Under well established restitutionary principles, one who has conferred a benefit upon another is entitled to recover in quasi contract. Failure to grant this recovery would unjustly enrich a sup-

wife exceeded the amount devoted by him to her support and maintenance. As has been pointed out in several cases, there must be proof of the services actually rendered. Middlecoff v. Middlecoff, 160 Cal. App. 2d 22, 324 P.2d 669 (1958). For criticism of later cases purportedly misciting Sanguinetti, see also, 1 B. ARMSTRONG, CALIFORNIA FAMILY LAW 864 (1953) [hereinafter cited ARMSTRONG].

57. 9 Cal. 2d 95, 69 P.2d 845 (1937). One author states that Lazzarevich "contained a review of the Sanguinetti case which made no reference to the fact that that decision rested on the assumption that there had been marital misconduct which would have justified divorce had the marriage been valid . . . ." 1 ARMSTRONG, supra note 55, at 866-67. In view of the heavy reliance upon section 40 of the Restatement of Restitution, it may well have been that the court in Lazzarevich consciously chose to ignore the element of "fault." If so the court was quite correct in doing so. As is stated in an early treatise: "By far the most important and most numerous illustrations of the scope of quasi-contract are found in those cases where the plaintiff's right to recover rests upon the doctrine that a man shall not be allowed to enrich himself unjustly at the expense of another." W. KEENER, QUASI-CONTRACTS 19 (1893). See also Comment, Rights of the Putative and Meretricious Spouse in California, 50 CALIF. L. REV. 866, 873 (1962).
58. 88 Cal. App. 2d at 715-16, 200 P.2d at 53, citing RESTATEMENT OF RESTITUTION § 40 (1937). Comment a points out that "the rule stated in this Clause is applicable both where the services are obtained by a consciously false statement and where they are the result of an innocent but material misstatement. The fact that the one rendering services does not expect to be compensated therefor or otherwise to receive benefit is immaterial."
60. Abbott, Mistake of Fact as a Ground for Affirmative Equitable Relief, 23 HARV. L. REV. 608 (1910); Holdsworth, Unjustifiable Enrichment, 55 L.Q. REV. 37 (1939). For an outstanding collection of source material in this area see Wade, The
posed husband. Further, a putative wife may suffer an unconscionable loss. Therefore, concerns about fraud and fault seem to be irrelevant. This is particularly true when fault has been eliminated as a basis for dissolution of a marriage in California.\textsuperscript{61}

Section 4455—the Putative Spouse’s Right to Support

The California decisions considered so far have dealt with the right of a putative spouse to recover in \textit{quantum meruit} the reasonable value of her services. By contrast, California has followed the overwhelming weight of authority in denying a putative spouse the right to recover alimony or spousal support.\textsuperscript{62} In \textit{Millar v. Millar},\textsuperscript{63} for example, the “wife” sought permanent support upon a decree of annulment, arguing that the general divorce statutes should be construed to include annulment actions. The court refused to so construe the statutes.\textsuperscript{64} Rather, it indicated that the obligation of support arises from the marital relation, and, therefore, where a marriage is declared a nullity, there is no basis for such an obligation. Later California decisions have not


61. The two grounds for dissolution of a marriage are irreconcilable differences which have caused the irretrievable breakdown of the marriage, and incurable insanity. CAL. CIV. CODE § 4506 (West 1970). Testimony and evidence presented in legislative hearings indicated general unanimity in the belief that the “fault” concept as utilized in California under former California Civil Code section 92 was replete with artificial standards and the often manufactured testimony presented at divorce trials bore very little relationship to the fact that a non-viable marriage existed. \textit{4 JOURNAL OF CALIFORNIA ASSEMBLY}, 1969 REG. SESS. 8056-57. A system which inflexibly characterizes one spouse as “innocent” and the other as “guilty” simply does not conform to realistic methods of assessing human behavior. \textit{REPORT OF THE GOVERNOR’S COMMISSION ON THE FAMILY} 30 [hereinafter cited \textit{GOVERNOR’S COMMISSION}].


63. 175 Cal. 797, 167 P. 394 (1917).

64. \textit{Id.} at 807, 167 P. at 398.
departed from this rule.\textsuperscript{65}

In granting a putative spouse the right to spousal support, Civil Code section 4455 states:

> The court may . . . order a party to pay for the support of the other party in the same manner as if the marriage had not been void or voidable. . . .\textsuperscript{66}

By enacting this statute the legislature clearly intended to make a putative and legal spouse's support rights the same. However, a critical issue which undoubtedly will arise is whether the California Legislature intended section 4455 to be the exclusive remedy to provide support to the putative spouse, \textit{i.e.}, whether it was intended to abrogate the traditional \textit{quantum meruit} rights.

**Legislative Intent**

The moving force behind the comprehensive revision of California's divorce laws, as implemented in The Family Law Act of 1969,\textsuperscript{67} was the Governor's Commission on the Family. Appointed by former governor Edmund G. Brown in early 1966, the commission was composed of social workers, legislators, doctors, and members of the bar and judiciary.\textsuperscript{68} Among various recommendations, the commission urged that courts have authority to award permanent alimony to an innocent spouse "following a declaration of nullity, by analogy to the laws governing the division of community property and alimony."\textsuperscript{69} To imple-
The commission's recommendation, the commission drafted a model statute. The comments to this statute stated that it was intended to conform the support rights of a putative spouse to those of a legal spouse. The commission's comment read as follows:

It is the intent of the Commission thereby to negate the effect of such cases as Sanguinetti v. Sanguinetti . . . insofar as they deny the putative wife's right to support. We believe that the Court should be able to award support to an innocent spouse who has lived with another person in good faith for a number of years, only to find that the marriage was void. To take account of such cases, the courts have used the fiction of the "value of services rendered" or have invoked an estoppel to deny the putative wife's claim. The Commission intends that this Section accomplish directly what has been done indirectly in equitable situations.

Pursuant to the commission's recommendation, the original section 4455 was enacted. While no cases are reported which construed the 1969 statute, certain ambiguities emerged rather readily. The most significant difficulty was that the 1969 statute arguably modified the traditional view that a remedy would be afforded a putative spouse even when that spouse had innocently been the cause of the impediment to the marriage. Perhaps in recognition of this problem, the legislature amended the section in 1970, eliminating the requirement that the recipient spouse be "innocent of fraud or wrongdoing." The section presently reads:

The court may, during the pendency of a proceeding to have a marriage adjudged a nullity or upon judgment, order a party to pay for the support of the other party in the same manner as if the marriage had not been void or voidable, provided that the party for whose benefit the order is made is found to be a putative spouse.

Thus, under the 1970 amendment to section 4455, the recipient spouse need only be "putative." Presumably, this reference to "putative" refers to that concept as developed by the courts in California.


70. Governor's Commission, supra note 61, at 75.
71. Id. at 76.
73. E.g., Sanguinetti v. Sanguinetti, 9 Cal. 2d 95, 69 P.2d 845 (1937). The putative spouse was allowed a quantum meruit award upon annulment of the marriage based on her prior undissolved marriage.
76. Cases and text accompanying notes 4-5 supra. California Civil Code section
The Effect of Section 4455 on Prior Remedies

The history of the present section, coupled with the commission's comments and other facts to be noted, indicate that section 4455 was intended to supersede the *quantum meruit* remedy formerly available to a putative spouse. The statute obviously was prompted by the Report of the Governor's Commission on the Family. That report stated that "[t]he Commission intends that this Section accomplish directly what has been done indirectly in equitable situations." 77 In view of the comprehensive coverage of the Family Law Act and the clear legislative intent that fault now is irrelevant, it seems logical that recovery under section 4455 was intended to be in lieu of rights theretofore obtained by decisions which were based upon principles of equity. 78

A second argument that section 4455 was intended to supersede case-made *quantum meruit* rights is found in the opinions which quite clearly indicate that such a remedy was in lieu of the right to support which then accrued exclusively to a lawful wife. In *Sanguinetti v. Sanguinetti*, 79 the supreme court pointed out that a legal right to alimony existed for the legal spouse, but that she had no right to *quantum meruit*. On the other hand, the court noted that the putative spouse had no right to alimony, but she did have the equitable *quantum meruit* remedy. 80 Since the rationale for granting equitable relief has been based on the inability to grant alimony, there is no need to consider an alternative remedy in the nature of *quantum meruit* when the right to spousal support is granted expressly by section 4455.

Two additional factors lead to the conclusion that section 4455 is intended to supersede the putative spouse's traditional *quantum meruit* remedy. First, equity traditionally does not grant a remedy when an 4452 (West Supp. 1972) provides, in part: "[W]henever a determination is made that a marriage is void or voidable and the court finds that either party or both parties believed in good faith that the marriage was valid, the court shall declare such party or parties to have the status of a putative spouse."

77. Governor's Commission, supra note 61, at 77.

78. The word "logical" in the textual material is used advisedly. The difficult cases are those in which the interpretative issue was not foreseen by legislators responsible for an enactment. In such cases, courts must perform the originative function of, in effect, assigning to a statute a meaning which it did not possess before judicial action. Cardozo had this in mind when he wrote: "interpretation is often spoken of as if it were nothing but a search and the discovery of a meaning which, however, obscure and latent, had none the less a real and ascertainable preexistence in the legislator's mind. The process, is indeed, that at times, but it is often something more." B. Cardozo, THE NATURE OF THE JUDICIAL PROCESS 14 (1921).

79. 9 Cal. 2d 95, 69 P.2d 845 (1937).

80. Id. at 100, 69 P.2d at 847 (1937).
adequate remedy exists at law.\textsuperscript{81} One test of adequacy is whether the remedy at law is as speedy, practical and just as the equitable remedy.\textsuperscript{82} That the putative spouse's \textit{quantum meruit} remedy is equitable in nature already has been established.\textsuperscript{83} Thus, since section 4455 provides an entirely adequate remedy for the putative spouse, equitable intervention apparently is not necessary. The second factor leading to the conclusion that section 4455 constitutes the exclusive remedy of the putative spouse is based more on reason than legal theory or principle: It would seem highly unlikely that the legislature intended to grant a remedy to a putative spouse that is not available to a lawful spouse.

It is difficult to speculate at this time whether a judicial extension of the statutory rights conferred upon the putative spouse is necessary or desirable. Aside from the undesirable consequences inherent in a multiplicity of actions, there is a limit to attaining essential justice in the area involving the rights of a putative spouse. Although arguments to the contrary could be raised, analysis and logic indicate that courts will hold that Civil Code section 4455 was intended by the legislature to be the exclusive remedy of a putative spouse insofar as support rights are concerned.

\textbf{Conclusion}

By enacting Civil Code sections 4452 and 4455 the California legislature intended to give statutory force and direction to two areas of family law that heretofore have been a matter of court-made law alone. In the case of section 4452, the legislature apparently intends to follow the established case law in allowing a putative spouse quasi-marital property rights in property which would have been community property if the supposed marriage had not been void or voidable. The more complicated situation where both a putative spouse and a legal spouse claim a portion of a deceased spouse's estate was decided in the 1969 case of \textit{Sousa v. Freitas}.\textsuperscript{84} However, the 1970 amendment to Civil Code section 5118 certainly will alter the award of property in a situation such as that in \textit{Sousa v. Freitas}, since earnings and accumulations of either legal spouse are separate property when the spouses are living separate and apart. Hence, the putative spouse now will get a

\begin{footnotes}
\textsuperscript{81} W. de Funik, \textit{Handbook of Modern Equity} 42 (2d ed. 1956); W. Walsh, \textit{Walsh on Equity} § 25 (1930).
\textsuperscript{83} See cases cited in notes 51-60 supra.
\textsuperscript{84} 10 Cal. App. 3d 660, 59 Cal. Rptr. 485 (1970).
\end{footnotes}
larger portion of the other's property, and the legal spouse will have a much smaller community property claim, if any claim at all. However, under section 4801 the legal spouse still is entitled to spousal support based on his or her need and the supporting spouse's ability to pay.

This right to support granted by section 4801 has been extended to the putative spouse as well by section 4455. This article has shown that the legislature intends section 4455 to abrogate the old quantum meruit recovery for a putative spouse. This is in keeping with the general intent manifested in the 1966 governor's commission report. That report recommended the elimination of differences between the support rights of a putative spouse and those of a legal spouse. By giving a putative spouse the same property and support rights as a legal spouse, the legislature, in enacting sections 4452 and 4455, appears to have accomplished the commission's intent—"to award support to an innocent spouse who has lived with another person in good faith for a number of years, only to find that the marriage was void." 

85. Governor's Commission, supra note 61, at 76.